

Regular Common Carrier Conference

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LEADS/REGS.DIV.

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Kevin M. Williams
Executive Director

FEDERAL
HIGHWAY
ADMINISTRATION

May 13, 1996

Docket Clerk
Federal Highway Administration
Room 4232
Office of Chief Counsel
400 Seventh Street, SW
Washington, DC 20590

FHWA-97-2277-16

Subject: FHWA Docket No. MC-96-6 --
Safety Performance History of New Drivers

Dear Sir or Madam:

Enclosed please find the comments of the Regular Common Carrier Conference in this proceeding. Please acknowledge your receipt of the comments by date stamping the enclosed copy.

Sincerely,

Kevin M. Williams
Executive Director

Enclosures

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ORIGINAL

BEFORE THE
FEDERAL HIGHWAY ADMINISTRATION

FHWA DOCKET NO. MC-96-6
SAFETY PERFORMANCE HISTORY OF
NEW DRIVERS

COMMENTS OF THE
REGULAR COMMON CARRIER CONFERENCE

By: Kevin M. Williams
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DATED: May 13, 1996

DOCKET MC-96-6-15
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The Regular Common Carrier Conference (RCCC) submits these comments in response to this proposed rule which would require prospective employers to seek and former employers to provide specific minimum safety information about a commercial truck driver. This Conference represents for-hire, interstate trucking companies that specialize in the transportation of less-than-truckload shipments. Our industry's annual revenue is in excess of \$17 billion. LTL motor carriers operate over 71,000 tractors and 250,000 trailers; they employ approximately 310,000 local and long haul drivers.

The RCCC is a Conference affiliated with the American Trucking Associations, Inc (ATA). We support the position of ATA and, in addition, recommend that FHWA make two further changes to the proposed rules.

SUMMARY OF ATA POSITION

ATA has requested FHWA to revise its rules as follows:

1. To require prior employers to investigate and provide information related to violations of the safety rules when known by the previous employer;
2. To delete the requirement that motor carriers check for violations of alcohol and drug rules of other DOT agencies;
3. To require previous motor carrier employers to only pass along the names of known employers of a truck driver, rather than the (daisy chain) information obtained from the other employers;

4. To delete the requirement that hours-of-service violations information be sought or released by employers;
5. To clarify the scope of the accident information sought, by not requiring the assembling and transmittal of accident reports and diagrams that are submitted to a government agency or insurance carrier;
6. To specify that a driver's right of review and comment on its employment history should be limited to the information obtained under these rules and should be for a 60 day period, commencing from the date upon which the driver submits an application for employment; and
7. To provide in these rules that the release of this information is required under the law to minimize the potential liability of prior employers for the disclosure of driver employment histories. Furthermore, ATA requests that FHWA review pending legislation and seek enactment of legislation to protect motor carriers from lawsuits that can arise from the disclosure of this required information.

**ADDITIONAL RECOMMENDATIONS
OF THE RCCC**

The purpose of these proposed rules is to provide for the free exchange of critical, safety-related driver information among employers within the trucking industry, while safeguarding the rights of drivers, by ensuring they are made aware that this information will be released and by affording them a reasonable opportunity to review it. This objective can best be accomplished

by requiring all the information, which must be sought and released under Section 391.23(c), be subject to a written authorization of release by the driver that must be forwarded by the hiring employers to the prior employers. This is the current requirement and procedure for alcohol and controlled substance information. It should be expanded to include all the information covered by the final rule. It can be accomplished by amending Section 391.23 (c) (2) to provide as follows:

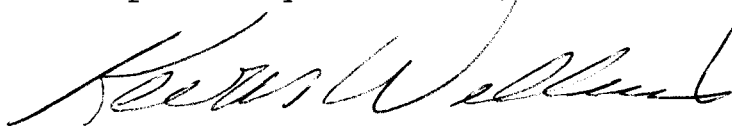
"Previous employers shall respond to requests for the information in paragraph (c) (1) of this section within 30 days after the written request, containing a driver's authorization to release the information, is received."
[additional language is underlined]

A corresponding change should be made to Section 391.23(e) to refer to all the information contained in c(1), rather than just subparagraphs (iii) and (iv) relating to alcohol and drugs. These modifications would reduce the potential liability of a previous employer for unlawful disclosure of information, since it will have received a written driver authorization to release this information. It also ensures a driver's foreknowledge that his or her driving and safety information will be sought and obtained from prior employers. It provides a superior safeguard to oral communications.

In addition, we concur with the position of Churchill Truck Lines, a separate commenter in this proceeding, that motor carriers which have ceased operations should either be exempted from these rules or only obligated to provide information for one year. Non-operating carriers have diminished personnel and insufficient time

to respond to such information requests. Often the employment documents have been discarded or its whereabouts may be unknown to the remaining skeletal staff. It would be time-consuming and burdensome to find and release all this employment information. This information is particularly burdensome to such carriers since most, if not all, their prior drivers will be seeking new employers in the industry. Therefore, they are likely to receive numerous and multiple requests each time a former driver interviews for a new job.

Respectfully submitted,



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Dated: May 13, 1996